Hovsepian v. Apple, Inc.

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EXHIBIT 7

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SOUTHERN DIVISION

ACACIA MEDIA TECHNOLOGIES CORPORATION, Plaintiff, v. NEW DESTINY INTERNET GROUP, ET AL., Defendants.	Case No. SA CV 02-1040 JW (MLGx) **Consolidated Cases:** SA CV 02-1165-JW (MLGx) SA CV 03-0218-JW (MLGx) SA CV 02-1048-JW (MLGx) SA CV 03-0219-JW (MLGx) SA CV 03-0308-JW (MLGx) SA CV 03-0271-JW (MLGx) SA CV 03-0259-JW (MLGx) SA CV 02-1063-JW (MLGx)
AND REFERENCED CONSOLIDATED AND RELATED CASES	**Related Cases:** SA CV 03-1801 JW (MLGx) SA CV 03-1803 JW (MLGx) SA CV 03-1804 JW (MLGx) SA CV 03-1807 JW (MLGx) **DEFENDANTS' RESPONSIVE CLAIM CONSTRUCTION BRIEF REGARDING UNITED STATES PATENT NO. 6,144,702** Date: May 18-20, 2004 Time: 9:30 a.m. Ctrm: 9C

It is not for this Court, despite the admonitions of the Federal Circuit to attempt to construe claims to preserve validity, to save these claims in the manner proposed by Acacia. The Court should construe the claims as written and find claims 1, 17, 18, and 32 invalid pursuant to § 112, ¶ 2. Further, the Court should construe dependent claims 7 and 33 in accordance with the algorithm of the "time encoder" set forth in the specification.

D. The Court Should Reject Acacia's Broad, Infringement-Inspired Construction of the "popularity code" Limitation.

Acacia's proposed construction of the phrase "wherein said identification encoder allows entry of a popularity code" is so broad and meaningless that it effectively eliminates the limitation from the claim. Acacia's motivation is obvious. Most parties transmitting video and audio on the Internet do not actually use "popularity codes." But Acacia does not let that get in its way. Under the infringement theory Acacia set forth in discovery, the limitation is satisfied by the ability to enter "metadata," which may include a "popularity code," or for that matter, any "code":

> The encoders used to encode video information, such as Windows Media encoder, Real encoder, or other encoders, such as Cleaner, have identification encoders which, in addition to allowing entry of a unique identification code, allows entry of metadata associated with video information. Metadata may include a popularity code, and therefore the identification encoder allows entry of a popularity code.

(Miller Decl., Ex. PP at 462-463.) Acacia's infringement-driven construction is untenable.

The "popularity code" performs a specific function in the disclosed transmission system. According to the patent specification, "[t]he popularity code can be used to determine the most appropriate form of media storage of the compressed data in a mixed media system." ('702 patent at 12:8-10.) "In some